made, eminently matters for the executive and not matters with which, in the exercise of my discretion as to granting declarations, or otherwise, I need be further concerned.

Judgment will be entered accordingly with half his taxed costs to the plaintiff.

Judgment for the plaintiff.

Solicitors: *J. B. Jeyaretnam & Co.*

COMPTROLLER OF INCOME TAX, STATES OF MALAYA v. H.K.V.

[A.C.J. (Ong Hock Sim J.) October 14, 1968]
[Penang — Civil Appeal No. 5 of 1968]

Income Tax — Secondary wives — Incomes of — Whether can be added to taxpayer's income for assessment of tax — Income Tax Ordinance, 1947, s. 47(1) — Income Tax Act, 1967, s. 45(1).

The taxpayer in this case had the incomes of two secondary wives added to his own income for assessment of tax. Upon refusal by the comptroller to amend the tax for the year of assessment in question, he appealed to the Income Tax Board of Review on the ground that "since the introduction of the Income Tax Ordinance, 1947 the income of the secondary wives of a Chinese person have not been included in the income of that person. This has been the practice of the Department of Inland Revenue from year of assessment 1948 up to year of assessment 1965. This is a right practice and a correct interpretation of the law. Therefore it is wrong on the part of the Inland Revenue to depart from this procedure as so-called 'secondary wives' are not the legal wives of a Chinese taxpayer. The laws of Muslim marriages regarding plurality of wives should not be applied to a Chinese taxpayer who is not a Muslim." The board in allowing the appeal held that the incomes of secondary wives did not come within the ambit of section 47(1) of the Ordinance and should not therefore be aggregated with the taxable income of the taxpayer. The board also accepted that this view accorded with the practice of the Inland Revenue Department from 1948 to 1965 and in a sense was supported by the definition of "wife" in section 45(1) of the Income Tax Act, 1967.

The comptroller appealed against this decision on the grounds that the board: (a) erred in law in deciding that the income of the two secondary wives of the respondent did not come within the ambit of section 47(1) of the Ordinance; (b) was wrong in not deciding that a secondary wife was a married woman within the meaning of section 47(1); (c) erred in arriving at its decision on the ground that it was "fortified by the fact that from 1948 to 1965 incomes of Chinese secondary wives have not been aggregated with the income of the husband". The board was wrong to have allowed itself to be influenced by the practice of the Income Tax Department in order to arrive at the correct interpretation of the law; and (d) further erred in resorting to the provisions contained in a subsequent statute that had no relevance for the purpose of the appeal before itself.

Held, dismissing the appeal: section 47(1) of the Ordinance did not require that the incomes of secondary wives be aggregated with that of the taxpayer and the earlier practice of the Inland Revenue Department was the correct one.

Observations on necessity of plain and unambigious language.

Per Curiam: "The uncertainty as to whether secondary wives ought to have their incomes aggregated with the husband's has been manifest in the attitude of the department since the inception of the Income Tax in 1947. A decision in favour of the Inland Revenue could well result in a direct campaign to aggregate incomes of wives over the last 12 years (since the 6 year time bar has been extended) and there will be cases where certain persons are dead and others will have to shoulder the tax. In effect, failure to pay will involve a number of consequences for non compliance, which would contravene article 7(1) of the Constitution that no person shall be punished for an act or omission which was not punishable by law when it was done or made".

Cases referred to:—

(1) *Choo Eng Choon & Ors.* v. *Neo Chan Neo & Ors.* (*Six Widows case*) (1908), 12 S.S.L.R. 120, C.A.

(2) *Cheang Thye Phin & Ors.* v. *Tan Ah Loy* [1920] A.C. 369.

(3) *Er Gek Ching* v. *Ho Ying Seng* [1949] M.L.J. 171.

(4) *Re Lee Gee Chong decd.* [1965] 1 M.L.J. 102.

CIVIL APPEAL.

Ng Mann Sau (Senior Federal Counsel) for the appellant.

C. O. Lim for the respondent.

Cur. Adv. Vult.

Ong Hock Sim J.: The taxpayer in this case had the incomes of two secondary wives added to his own income for assessment of tax. The Comptroller of Income Tax having refused to amend the tax for year of assessment 1966 in respect of notices of assessments dated 7th May, 1966 and 9th April, 1966 the taxpayer appealed to the Board of Review pursuant to section 75(1)(a) of the Income Tax Ordinance 1947 (hereinafter referred to as "the Ordinance") on three grounds two of which contesting the inclusion of the two ladies as the secondary wives of the taxpayer were abandoned in the course of the hearing before the board. The only remaining ground is set out hereunder:—

"1. Since the introduction of the Income Tax Ordinance, 1947 the income of the secondary wives of a Chinese person have not been included in the income of that person. This has been the practice of the Department of Inland Revenue from year of assessment 1948 up to year of assessment 1965. This is a right practice and a correct interpretation of the law. Therefore it is wrong on the part of the revenue to depart from this procedure as so-called 'secondary wives' are not the legal wives of a Chinese taxpayer. The laws of Muslim marriages regardng pluraility of wives should not be applied to a Chinese taxpayer who is not a Muslim."

The board allowed the appeal of the taxpayer, holding that the incomes of secondary wives do not come within the ambit of section 47(1) of the Ordinance and should not therefore be aggregated with the taxable income of the

taxpayer. This, the board considered, accorded with the practice of the Inland Revenue Department from 1948 to 1965 and in a sense supported by the definition now included in section 45(1) of the Income Tax Act, 1967 of "wife" as "a woman (who whether or not she has gone through any religious or other ceremony) is regarded by virtue of any law or custom as the wife of a man or as one of his wives."

The comptroller appealed to the High Court from the decision of the board allowing the taxpayer's appeal on four grounds, namely:—

1. The Board of Review erred in law in deciding that the income of the two secondary wives of the respondent do not come within the ambit of section 47(1) of the Income Tax Ordinance, 1947.
2. The board was wrong in not deciding that a secondary wife is a married woman within the meaning of section 47(1) of the Income Tax Ordinance, 1947.
3. The board erred in arriving at its decision on the ground that it was "fortified by the fact that from 1948 to 1965 incomes of Chinese secondary wives have not been aggregated with the income of the husband". The board was wrong to have allowed itself to be influenced by the practice of the Income Tax Department in order to arrive at the correct interpretation of the law.
4. The board further erred in resorting to the provisions contained in a subsequent statute that has no relevance for the purpose of the appeal before itself.

The first two can conveniently be linked together. Counsel for the appellant referred to the *Six Widows Case*,[1] and the case of *Cheang Thye Phin & Ors.* v. *Tan Ah Loy* [2] that the Chinese are polygamous and that the courts have held that a Chinese could be married to more than one woman at the same time. He also cited *Er Gek Ching* v. *Ho Ying Seng*,[3] and *Re Lee Gee Chong deceased*: *Tay Geok Yap* v. *Tan Lian Cheow* [4] that no ceremony is necessary and that the basis of such marriage is consensual and a secondary wife is a lawful wife. For all purposes she is a married woman and is therefore within section 47(1) which says that the income of a married woman shall be deemed to be the income of the husband. He further added that Muslims, though entitled to four wives, had the wives' incomes aggregated to theirs. He also referred to the Married Women Ordinance No. 36 of 1957, the Married Women and Children (Maintenance) Ordinance No. 36 of 1950 and the Distribution Ordinance, No. 1 of 1958 where secondary wives were considered as married women or within the definition of "wife". As to grounds 3 and 4, counsel contended that the department was entitled to change its practice from time to time, there being no legal prohibition against it. Further the appeal was filed in 1966 and the board ought not to resort to Act 47 of 1967 for the interpretation of section 47(1).

While it is true that a secondary wife is a married woman, I would quote from the *Six Widows Case* that "the courts of the Straits Settlements will recognize polygamous unions for purposes of succession and legitimacy". To seek to include secondary wives within section 47(1) would in my view require very plain and unambiguous language. I would quote from *Maxwell* on Interpretation of Statutes (11th Edition) page 278-9:—

> "In a Taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. A construction, for example, which would have the effect of making a person liable to pay the same tax twice in respect of the same subject-matter would not be adopted unless the words were very clear and precise to that effect. In a case of reasonable doubt the construction most beneficial to the subject is to be adopted. Still less is the language of a section to be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words."

The learned Senior Federal Counsel has admitted that "married woman" is a term of the wider import than "wife". Part IX in respect of "Persons chargeable etc." has the heading "A Husband and Wife" and in the proviso to it, the word "wife" is used and not "married woman".

I would also read from *Craies* on Statute Law 6th Edn., at pages 112 and 113:—

> "Express and unambiguous language appears to be absolutely indispensable in statutes passed for the following porposes, *inter alia*: Imposing a tax or charge; . . . If a statute professes to impose a charge, 'the rule' said the Judicial Committee in *Oriental Bank* v. *Wright*, is 'that the intention to impose a charge upon a subject must be shown by clear and unambiguous language.' In *Dock Co. at Kingston-upon-Hull* v. *Browne*, Lord Tenterden C.J. said: 'These rates are a tax on the subject and it is a sound general rule that a tax shall not be considered to be imposed (or at least for the benefit of a subject) without a plain declaration of the Legislature to impose it.' This accords with the view expressed by Parke B. in *Re Micklethwait*: 'It is a well-established rule that the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.' In *Partington* v. *Attorney-General*, Lord Cairns said: 'I am not at all sure that, in a case of this kind — a fiscal case — form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words,

if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you simply adhere to the words of the statute.'"

The uncertainty as to whether secondary wives ought to have their incomes aggregated with the husband's has been manifest in the attitude of the department since the inception of the Income Tax in 1947. A decision in favour of the Inland Revenue could well result in a direct campaign to aggregate incomes of wives over the last 12 years (since the 6 year time bar has been extended) and there will be cases where certain persons are dead and others will have to shoulder the tax. In effect, failure to pay will involve a number of consequences for non compliance, which would contravene article 7(1) of the Constitution that no person shall be punished for an act or omission which was not punishable by law when it was done or made.

I may add that the practice of the Income Tax Department was one which was dictated by the inherent difficulties attendant upon the implementation of section 47(1) in regard to secondary wives. Proof of marriage is not as easy as allegations of a marriage and equally difficult of proof is a Chinese divorce which is as devoid of formalities as the contracting of a polygamous union. It would involve a departmental determination as to the status of a woman which should be the function of a court.

If I accede to the appeal of the Inland Revenue, it would result in intolerable hardship and I hold that the earlier practice of the Inland Revenue was the correct one.

I therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Lim, Lim & Oon.*